

★ JUL 13 2011 ★

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
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4 DEVERE GROUP GMBH, a foreign entity,
5 Plaintiff,
6

7 vs.
8

9 OPINION CORP. d/b/a
10 PISSEDCONSUMER.COM, MICHAEL
11 PODOLSKY, JOANNA SIMPSON and ALEX
12 SYROV,
13

14 Defendants.
15

CV 11 - 3360
COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF

BLOCK, J.

BLOOM, M.J.

12 Plaintiff, by and through its attorneys, **NAPOLI BERN RIPKA SHKOLNIK &**
13 **ASSOCIATES, LLP**, and **MYERS & COMPANY, P.L.L.C.**, allege upon information and belief
14 as follows:

15 I. PARTIES

16 1.1 deVere Group GmbH ("deVere") is a foreign entity organized under Swiss law.
17

18 1.2 Defendant Opinion Corp. d/b/a PissedConsumer.com is a New York corporation.
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20 Its principal place of business is in Brooklyn, New York.
21

22 1.3 Defendant Michael Podolsky is, upon information and belief, is the chief
23 executive officer of Opinion Corp. and resides in Brooklyn, New York. Mr. Podolsky jointly
24 controls and operates the PissedConsumer.com website.
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1 1.4 Defendant Joanna Simpson is, upon information and belief, Opinion Corp.'s
2 marketing director and resides in the state of New York. Ms. Simpson jointly controls and
3 operates the PissedConsumer.com website.

4 1.5 Defendant Alex Syrov the president of Opinion Corp. and resides in Brooklyn,
5 New York. Mr. Syrov jointly controls and operates the PissedConsumer.com website.

6 1.6 Unless there is a reason to specifically refer to a particular defendant, defendants
7 are referred to collectively as "Opinion Corp." in this complaint.

8 II. JURISDICTION AND VENUE

9 2.1 This Complaint arises in part under the Lanham Act (15 U.S.C. § 1125).

10 2.2 This court has federal question jurisdiction over these claims pursuant to
11 15 U.S.C. § 1121 and 28 U.S.C. § 1331. This court has supplemental jurisdiction over the state
12 law claims pursuant to 28 U.S.C. § 1367 because those claims are so closely related to the
13 federal claims alleged in this complaint so as to form part of the same case or controversy.

14 2.3 Defendants are citizens of New York and subject to personal jurisdiction in New
15 York.

16 2.4 Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because all
17 defendants do business and reside in the Eastern District.

19 III. FACTS

20 A. deVere's Services and Products

21 3.1 deVere is a major independent financial company specializing on international
22 financial consultations and services.

23 3.2 deVere has more than 60,000 clients and provides its services in 40 countries with
24 offices in Dubai, Geneva, Hong Kong, London, Mexico and Moscow.

1 3.3 deVere offers its services to international investors, expatriates, investment
2 houses and insurance companies.

3 3.4 deVere utilizes the trade names: deVere, deVere Group and deVere and Partners.

4 3.5 deVere has developed distinctive trade dress associated with its business
5 operations.

6 3.6 deVere's trade names are inherently distinctive.

7 3.7 deVere has invested heavily in international marketing.

8 3.8 deVere operates a number of websites including devere-group.com and
9 devereandpartners.co.uk. These websites provide information about deVere and investment
10 opportunities to clients and potential clients.

11 B. Opinion Corp. Falsely Claims to Function as an Unbiased Consumer Advocacy
12 Group Through its Operation of PissedConsumer.com

13 3.6 Opinion Corp. owns, operates and maintains the web site PissedConsumer.com.

14 3.7 Opinion Corp. invites consumers to post public complaints on its web site
15 PissedConsumer.com from their personal computers and mobile phones.

16 3.8 Opinion Corp. publishes a “PissedConsumer” iPhone application and advertises heavily
17 on Facebook.

18 3.9 Opinion Corp. has published numerous press releases claiming that it is an
19 unbiased “premier consumer advocacy group.” Upon information and belief, these press releases
20 were authored by Opinion Corp. and Ms. Simpson.

22 3.10 Opinion Corp. advertises PissedConsumer.com to the public as an unbiased
23 consumer review web site that allows consumers to “make better choices” and provides
24 consumers an “empowering” and “unbiased” view of companies and products.

1 3.11 Opinion Corp. encourages the posting of negative reviews at the

2 PissedConsumer.com website.

3 3.12 Opinion Corp. ensures that negative reviews are prominently displayed at

4 PissedConsumer.com.

5 3.13 Opinion Corp. optimizes content of negative reviews to increase their visibility to

6 search engines.

7 3.14 Opinion Corp. makes no attempt to determine whether reviews are legitimate.

8 3.15 Opinion Corp. offers to remove, recategorize, hide and filter existing and new
9 negative reviews at the PissedConsumer.com website if affected companies pay it.

10 3.16 Opinion Corp. offers to act as a “gatekeeper” for affected companies to ensure
11 that new negative reviews are not displayed at PissedConsumer.com if the affected company
12 pays it an ongoing fee.

13 3.17 Opinion Corp. refuses to require persons or entities posting reviews to reveal
14 their identities unless affected companies pay a fee.

16 C. Opinion Corp. Misuses deVere’s Trade Name at PissedConsumer.com,
17 PissedConsumer.com Subdomains and in Metadata

18 3.18 Opinion Corp. creates “subdomains” associated with PissedConsumer.com.

19 3.19 Opinion Corp. utilizes the subdomain “devere-group.pissed.consumer.com.”

20 3.20 PissedConsumer uses the trade name deVere in connection with this subdomain.

21 3.21 PissedConsumer also uses deVere’s trade name in the metadata associated with its
22 web site.

1 3.22 Upon information and belief defendant Alex Syrov controls the creation of
2 subdomains related to PissedConsumer.com and the manner in which deVere's trade name is
3 used in connection with those subdomains.

4 3.23 Opinion Corp. also uses deVere's trade names in the metadata associated with
5 PissedConsumer.com.

6 D. Opinion Corp. Utilizes Improper Search Engine Optimization Tactics

7 3.24 Google's search engine displays PissedConsumer.com's subdomain deVere-
8 Group.PissedConsumer.com among the top two results when a search is performed for "deVere"
9 or "deVere Group" despite the fact that PissedConsumer offers very little content about deVere
10 or its services.

11 3.25 The unnaturally high Google ranking is the result of Opinion Corp.'s improper
12 search engine optimization (SEO).

13 3.26 Google has taken punitive action against Opinion Corp. based on its use of "black
14 hat" SEO practices.

16 **IV. CAUSES OF ACTION**

17 A. Violations of 15 U.S.C. § 1125 - The Lanham Act

18 4.1 deVere incorporates by reference each and every allegation of the paragraphs
19 above.

20 4.2 DeVere's trade name, marks, styles and domain names and variations thereof
21 ("marks") are valid and distinctive marks entitled to protection under the Lanham Act.

22 4.3 Opinion Corp. uses deVere's marks and confusing derivatives at
23 PissedConsumer.com.

24 4.4 deVere did not consent directly or indirectly to Opinion Corp.'s misuse of

1 deVere's marks in any manner.

2 4.5 Opinion Corp.'s unauthorized and willful misuse of deVere's marks

3 constitutes use in commerce and is likely to cause confusion, mistake or deception as to the
4 source of the goods and services offered.

5 4.6 Opinion Corp.'s unauthorized and willful misuse of deVere's marks is likely to

6 cause confusion as to whether deVere is sponsoring, has authorized or is somehow affiliated with
7 the services and products advertised by Opinion Corp. at PissedConsumer.com.

8 4.7 Opinion Corp.'s unauthorized and willful misuse of deVere's marks is likely to

9 lead consumers to erroneously believe that clicking on advertisements or headers displayed at the
10 PissedConsumer.com website will lead to deVere's website and that the services and any
11 products they advertise are associated with, sponsored by, developed by, or somehow affiliated
12 with deVere.

13 4.8 Opinion Corp.'s unauthorized and willful use of deVere's protected

14 marks constitutes infringement, unfair competition, false designation of
15 origin, false advertising and cyber piracy all in violation of 15 U.S.C. § 1125.

16 4.9 deVere has been injured in its business and property by reason of the foregoing

17 Lanham Act violations in an amount to be determined at trial.

18 4.10 Moreover, deVere is currently suffering irreparable and continuing injury as a

19 result of Defendants' continued use of deVere's marks in connection with the
20 PissedConsumer.com and devere.group.pissed.consumer.com's websites.

21 4.11 Opinion Corp.'s infringement, unfair competition, false designation of origin,

22 false advertising and cyber piracy have caused and, unless restrained by this Court, will continue
23 to cause deVere irreparable injury.

1 B. Common Law Trademark Infringement, Unfair Competition, False Designation of
2 Origin and Misappropriation

3 4.12 deVere incorporates by reference each and every allegation of the paragraphs
4 above.

5 4.13 deVere owns protected and/or protectable common law trade name, trade style,
6 and trade dress rights in its distinct and valuable marks.

7 4.14 deVere uses its marks in commerce and in conjunction with its
8 business operations.

9 4.15 Opinion Corp.'s unlawful and willful conduct is likely to create confusion
10 concerning the origin of the goods or services advertised.

11 4.16 Opinion Corp.'s unlawful and willful conduct constitutes common law trademark
12 infringement, unfair competition, false designation of origin and misappropriation.

13 4.17 Opinion Corp.'s unlawful and willful conduct has directly and
14 proximately caused and continue to cause injury and damage to deVere by, among other
15 things, causing deVere to lose control of its business reputation, diluting its marks, causing
16 confusion, diverting customers and otherwise causing significant commercial loss.

17 4.18 As a result of Opinion Corp.'s actions deVere has suffered, and will
18 continue to suffer, irreparable harm and deVere has no adequate remedy at law.

19 4.19 Opinion Corp.'s violations of law have damaged deVere in an amount to be
20 determined at trial.

22 C. Tortious Interference with Business Relations

23 4.20 deVere incorporates by reference each and every allegation of the paragraphs
24 above.

1 4.21 Opinion Corp. tortiously interfered with deVere's business relations by publishing
2 false statements about deVere to third parties.

3 4.22 deVere did not authorize Opinion Corp.'s conduct.

4 4.23 Opinion Corp. acted intentionally or recklessly.

5 4.24 Opinion Corp. knew that deVere would seek to enter into contracts and relations
6 to grow, support and expand its business.

7 4.25 Opinion Corp. had reason to know and intended for its actions to interfere with
8 deVere's business relations.

9 4.26 As a direct and proximate cause of Opinion Corp.'s actions, Opinion Corp. caused
10 and continues to cause deVere damages in amounts to be proven at trial.

11 D. Tortious Interference with Contract

12 4.27 deVere incorporates by reference each and every allegation of the paragraphs
13 above.

14 4.28 Opinion Corp. tortiously interfered with deVere's contractual relationship with its
15 existing clients by publishing false statements of fact about deVere.

16 4.29 deVere did not authorize Opinion Corp.'s conduct.

17 4.30 Opinion Corp. acted intentionally or recklessly.

18 4.31 Opinion Corp. knew that deVere had a substantial existing client-base.

19 4.32 Opinion Corp. had reason to know and intended for its actions to interfere with
20 deVere's business relations.

21 4.33 As a direct and proximate cause of Opinion Corp.'s actions, Opinion Corp. caused
22 and continues to cause deVere damages in amounts to be proven at trial.

1 E. Deceptive Acts and Practices under General Business Law §349

2 4.34 deVere incorporates by reference each and every allegation of the paragraphs
3 above.

4 4.35 Opinion Corp. willfully or knowingly engaged in and continues to engage in
5 materially deceptive and misleading conduct aimed at deceiving reasonable consumers and the
6 public regarding deVere.

7 4.36 As a direct and proximate cause of Opinion Corp.'s continued and ongoing
8 deception deVere has suffered and continues to suffer irreparable harm and damages to be
9 proven at trial.

10 F. Fraud

11 4.37 deVere incorporates by reference each and every allegation of the paragraphs
12 above.

13 4.38 Opinion Corp. published material misrepresentations and made material
14 omissions of fact about deVere at PissedConsumer.com.

15 4.39 Opinion Corp. knew that the reviews it published were false and contained
16 material misrepresentations.

17 4.40 Opinion Corp. published these reviews with the intent of inducing reliance on the
18 part of persons searching for deVere and persons who landed on PissedConsumer.com.

19 4.41 Persons have and continue to rely on the reviews published by Opinion Corp.

20 4.42 As a direct and proximate cause of Opinion Corp.'s actions deVere has suffered
21 damages in an amount to be proven at trial.

22 G. Negligent Misrepresentation

23 4.43 deVere incorporates by reference each and every allegation of the paragraphs

above.

4.44 Opinion Corp. had a duty to provide fair and unbiased information that was in its possession and known to it. Opinion Corp. published reviews that made material misrepresentations of fact and contained material omissions.

4.45 Had Opinion Corp. conducted a reasonable investigation in accordance with the standards followed ordinarily and by responsible parties it should have known that the reviews contained material misstatements of fact and omissions.

4.46 Opinion Corp. knew the seriousness of the information it was supplying to the public and that the public would desire such information and would act on it.

4.47 As a direct and proximate cause of Opinion Corp.'s actions deVere suffered damages in an account to be proven at trial.

V. PRAYER FOR RELIEF

WHEREFOR, having fully set forth their claims against Defendants, deVere prays for the following:

A. Preliminary and permanent injunctive relief enjoining Defendants from using deVere's marks in connection with the PissedConsumer.com or devere.group.pissed.consumer.com websites;

B. For monetary judgment in an amount sufficient to compensate it for the damages suffered as a result of the described conduct;

C. For exemplary and/or punitive damages authorized by applicable statutory and common law;

D. For its reasonable costs and attorneys fees incurred herein, pursuant to all applicable statutory, common law, and equitable theories; and

E. For such other and further relief as the Court deems just and equitable.

DATED this 12th day of July, 2011.

NAPOLI BERN RIPKA SHKOKLNIK & ASSOCIATES LLP

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**COMPLAINT FOR DAMAGES AND EQUITABLE
RELIEF - 11**

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ATTORNEY VERIFICATION

Christopher R. LoPalo, an attorney at law, duly admitted to practice in the Courts of the State of New York, affirms under the penalties of perjury that:

He is the attorney for the plaintiff(s) in the above-entitled action. That he has read the foregoing Complaint and knows the contents thereof, and upon information and belief, deponent believes the matters alleged therein to be true.

The reason this Verification is made by deponent and not by the plaintiff(s) is that the plaintiff(s) herein reside(s) in a county other than the one in which the plaintiff's attorneys maintain their office.

The source of deponent's information and the grounds of his belief are communication, papers, reports and investigation contained in the file.

Dated: July 12, 2011

Christopher R. LoPalo